

Internal Revenue Service

Department of the Treasury
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Person To Contact:

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Legend

Taxpayer =

Year 1 =

Year 5 =

Date 1 =

Country X =

Law Firm Y =

Accounting Firm Z =

Dear :

This is in response to a letter received by our office on November 17, 2009, submitted on behalf of Taxpayer by its authorized representative, requesting an extension of time under Treas. Reg. § 301.9100-3 to (1) make the election provided by section 953(d) of the Internal Revenue Code ("Code") to be treated as a domestic corporation for U.S. tax purposes commencing on the first day of Taxpayer's taxable year for Year 1 and (2) make the election provided by section 831(b) of the Code for the alternative tax for certain small insurance companies for Year 1.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Taxpayer is an insurance company incorporated in Country X on Date 1, Year 1. Taxpayer's principal activity is to insure for various risks of loss. Taxpayer also reinsures and retrocedes risk to and from another insurance company. Taxpayer contracts for its supervisory, general and administrative, and insurance services with various service providers and professional organizations. As a result, Taxpayer has no employees of its own and has no depreciable assets.

In the course of forming and initiating the operations of Taxpayer, Taxpayer retained the services of Law Firm Y. Taxpayer relied on Law Firm Y's expertise on complying with U.S. federal income tax. Law Firm Y concluded that Taxpayer qualified as a Small Insurance Company exempt from taxation under section 501(c)(15) of the Code.

Law Firm Y also referred Taxpayer to Accounting Firm Z to handle the filing of all necessary U.S. federal tax returns and filing requirements arising out of the formation of Taxpayer as a Country X domiciled insurance company. Law Firm Y advised Accounting Firm Z that Taxpayer was exempt from U.S. federal income taxation pursuant to section 501(c)(15). Accordingly, Accounting Firm Z prepared Form 990, *Return of Organization Exempt from Tax*, for Taxpayer's first taxable year ending December 31, Year 1 and subsequent taxable years. Neither Law Firm Y nor Accounting Firm Z advised Taxpayer of the elections under sections 953(d) and 831(b) until Year 5.

In Year 1, Law Firm Y informed Accounting Firm Z that Taxpayer was not eligible to be treated as an insurance company exempt from tax under section 501(c)(15) because the gross receipts of the controlled group to which Taxpayer is a member exceed \$600,000 for Year 1 and subsequent taxable years. In Year 5, Law Firm Y first advised Taxpayer that it was eligible to make the election under section 953(d) to be treated as a domestic corporation for U.S. tax purposes and the small business election for non-life insurance companies under section 831(b)(2)(A) for Year 1.

Taxpayer represents that an extension to file a Form 1120-PC, *U.S. Property and Casualty Insurance Company Income Tax Return*, was filed for Year 1 and subsequent taxable years. Also, Taxpayer represents that it has not received notice from the IRS with respect to the failure of late filing of any return or form.

The substantive and procedural rules for making a section 953(d) election are contained in Notice 89-79, 1989-2 C.B. 392 and Rev. Proc. 2003-47, 2003-2 C.B. 55, respectively. These rules provide that the election must be filed by the due date prescribed in section 6072(b) (including extensions) for the U.S. income tax return that is due if the election becomes effective. Section 4.04(2), Rev. Proc. 2003-47. In addition, an electing corporation must use the calendar year as its annual accounting period for U.S. tax purposes, unless it joins in the filing of a consolidated return and

adopts the parent corporation's tax year. Section 1, Notice 89-79. The section 953(d) election was not filed by the due date of the return for the Year 1 taxable year and thus, was not a timely election.

Generally, insurance companies other than life insurance companies are taxable under section 831(a) of the Code on their taxable income. However, certain eligible companies pay an alternative tax provided in section 831(b) based only on their taxable investment income. Section 831(b)(2)(A)(ii) requires that a company elect the application of the alternative tax imposed by section 831(b) for the taxable year. The statute does not contain a due date. The election under section 831(b)(2)(A) is listed in Treas. Reg. § 301.9100-8(a) of the regulations as section 1010(f)(1) of the Technical and Miscellaneous Revenue Act of 1988 and is available for taxable years beginning after December 31, 1986. Treas. Reg. § 301.9100-8(a)(2) prescribes the time and manner for making the election under section 831(b)(2)(A)(ii). That section provides that the election must be made by the later of –

- (A) the due date (taking into account any extensions of time to file, obtained by the taxpayer) of the tax return for the first taxable year for which the election was effective, or
- (B) January 22, 1990.

Treas. Reg. § 301.9100-8(a)(3) also provides that if the tax return has not been filed prior to making the election under section 831(b)(2)(A)(ii), the election must be made by attaching a statement to the tax return for the first taxable year for which the election is to be effective. If such tax return is filed prior to the making of the election, the statement must be attached to an amended tax return of the first taxable year for which the election is to be effective. The section 831(b) election was not timely made in accordance with these provisions.

Treas. Reg. § 301.9100-1(c) provides, in relevant part, that the Commissioner, in his discretion, may grant a reasonable extension of time under the rules set forth in Treas. Reg. § 301.9100-3 to make a regulatory election or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all the subtitles of the Code except subtitles E, G, H, and I.

Treas. Reg. § 301.9100-1(b) provides that an election includes an application for relief in respect of tax, and defines a regulatory election as an election whose due date is prescribed by a regulation, a revenue ruling, revenue procedure, notice, or announcement.

Treas. Reg. § 301.9100-3(a) provides that requests for extensions of time for regulatory elections will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish to the satisfaction of

the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Treas. Reg. § 301.9100-3(b)(1) provides that except as provided in Treas. Reg. § 301.9100-3(b)(3)(i) through (iii), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer:

- (i) requests relief under this section before the failure to make the regulatory election is discovered by the Internal Revenue Service;
- (ii) failed to make the election because intervening events beyond the taxpayer's control;
- (iii) failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election;
- (iv) reasonably relied on the written advice of the Internal Revenue Service; or
- (v) reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Treas. Reg. § 301.9100-3(c)(1) provides in pertinent part, that the Commissioner will grant a reasonable extension of time to make a regulatory election only when the interests of the Government will not be prejudiced by granting the relief.

Based solely on the facts and information submitted we conclude that Taxpayer satisfies Treas. Reg. §301.9100-3 with respect to the election under sections 953(3) and 831(b). Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to make the election provided by section 953(d) in accordance with the rules set forth in Notice 89-79 and Rev. Proc. 2003-47, to be treated as a domestic corporation for U.S. tax purposes effective for the tax year ended on December 31, Year 1. Further, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to make the election provided by section 831(b) for the tax year ended on December 31, Year 1.

The granting of an extension of time is not a determination that Taxpayer is otherwise eligible to make the elections under section 953(d) or section 831. Treas. Reg. § 301.9100-1(a).

Notwithstanding that an extension of time is granted under Treas. Reg. § 301.9100-3 to make the elections under sections 953(d) and 831(b), penalties and interest that would otherwise be applicable, if any, continue to apply with respect to the income tax return for the tax year ended on December 31, Year 1.

A copy of this ruling letter should be associated with Taxpayer's sections 953(d) and elections.

The ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

No ruling has been requested, and none is expressed, as to the application of any other section of the Code or regulations to the facts presented.

Pursuant to a power of attorney on file in this office, a copy of this ruling is being furnished to your authorized representative.

Sincerely,

Jeffery G. Mitchell
Special Counsel
(International)